

**BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
March 25, 2004 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Ruth Ann Wall, Presiding Officer, presided. No Board members were present.

Jeffrey W. Buckley and Douglas Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case  
Lic = Licensing Application  
RF = Recovery Fund Claim  
Trades = Tradesmen Application

C = Complainant/Claimant  
A = Applicant  
R = Respondent/Regulant  
W = Witness  
Atty = Attorney

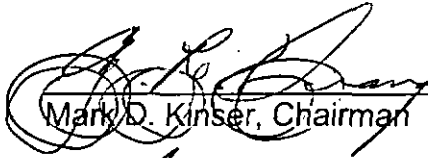
Participants

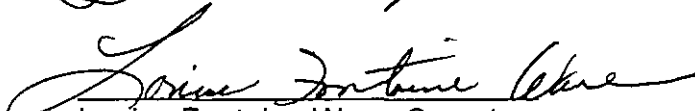
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|--|---|
| 1. Freddie Henry and<br>Donald & Woody Belcher,<br>t/a Belcher & Son Home Improvement<br>File Number 2003-01863 (RF) | F. Henry - C  |
| 2. Ray & Nellie Koon and<br>Simonton J. Candler, t/a Miracle Homes<br>File Number 2004-02326 (RF)                    | R. Koon - C<br>Herbert Pickford - C Atty<br>C. Simonton - R (by phone)  |
| 3. Ralph and Jennie Nezas and<br>AMG Contracting, Inc.<br>File Number 2004-02373 (RF)                                | R. Nezas - C<br>J. Nezas - C<br>George Eliades - C Atty   |
| 4. Tommy & Brenda Wallace and<br>Millennium Pools & Spas Inc.<br>File Number 2003-01952 (RF)                         | T. Wallace - C<br>B. Wallace - C<br>Chad Rinard - C Atty  |
| 5. Charles Glover and<br>Cornerpost Construction Inc.<br>File Number 2003-01880 (RF)<br><b>No Decision Made</b>      | C. Glover - C<br>Susan Glover - C<br>Charles Miller - W<br>Saunders - R's Atty.<br>Charles Morrell - R<br>McCreedy - R's Atty |

- |  |                                      |
|--|--------------------------------------|
| 6. Raymond & Elaine Miller and<br>David J. Fernandez Inc.<br>File Number 2003-02045 (RF)                       | Elaine Miller – C                    |
| 7. Gabriel Worsham and<br>Alvin E. Gable, t/a Gable Enterprises<br>File Number 2003-01876 (RF)                 | Worsham – C<br>Irwin Heller – C Atty |
| 8. Bernard & Greta Campbell and<br>Michael Layne Tabor, t/a GT Construction Co.<br>File Number 2003-01513 (RF) | None                                 |
| 9. Lee Walker and<br>A C Pools Inc.<br>File Number 2003-01536 (RF)   | Walker – C                           |
| 10. Mark Lindsey and<br>NOVA Industries, t/a S & S Kitchen and Bath<br>File Number 2003-01532 (RF)             | Lindsey – C                          |
| 11. Todd Landreth and<br>Clayton Allen<br>File Number 2003-02011 (RF)  | Landreth – C                         |

The meeting adjourned at 4:00 p.m.

BOARD FOR CONTRACTORS

  
Mark D. Kinser, Chairman

  
Louise Fontaine Ware, Secretary

COPY TESTE:

\_\_\_\_\_  
Custodian of Records

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION  
BOARD FOR CONTRACTORS

**IN RE:** In the matter of the Virginia Contractor Transaction Recovery Act Claim of  
Freddie Henry (Claimant) and Donald & Woody Belcher, t/a Belcher & Son  
Home Improvement (Regulant)  
**LICENSE NUMBER: 2705 07314**

**FILE NUMBER: 2003-01863**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Freddie Henry and to Donald and Woody Belcher, t/a Belcher and Son Home Improvement, on January 30, 2004. The following individuals participated at the conference: Freddie Henry, Claimant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one appeared on behalf of Donald & Woody Belcher, t/a Belcher & Son Home Improvement.

## **Background**

On **July 11, 2002**, in the Petersburg General District Court, Freddie Henry obtained a **Judgment** against Donald and Woody Belcher, t/a Belcher and Son Home Improvement, in the amount of **\$2,964.75, plus interest and \$46.00 costs**.

On **June 17, 2002**, in the United States Bankruptcy Court, Eastern District of Virginia, Donald M. Belcher filed a Chapter 7 Petition.

The **claim** in the amount of **\$3,010.75** was received by the Department of Professional and Occupational Regulation on **November 20, 2002**.

## **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Two mechanic liens was placed on my property" the basis for the suit.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did** contract with the regulant.

The Board issued Class B License Number 270507314 to Donald and Woody Belcher, t/a Belcher and Son Home Improvement, on **February 6, 1992**. The license was permanently revoked on **March 7, 2002**. The claimant entered into a written contract with Belcher and Son Home Improvement on **February 3, 2001** for the construction of an addition to the claimant's residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on July 11, 2002. The claim was received on November 20, 2002.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Belcher and Son Home Improvement for the construction of an addition to the claimant's residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. Donald M. Belcher filed for bankruptcy protection.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant

involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

In the Affidavit of Facts dated **January 22, 2003**, the claimant asserts that two mechanics liens were placed on the claimant's residence. Roper Lumber Company place a lien in the amount of \$2,461.12 and Do-Right Dudley's, Inc., placed a lien against the property in the amount of \$547.76. The claimant had to pay the liens prior to closing on the refinancing. The regulant had previously received the money for payment of all subcontractors and materials. The regulant never reimbursed the claimant for the amount paid to satisfy the liens. The claimant also incurred an additional \$60.00 for court cost.

**10. Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "Yes."

**11. Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$3,010.75. The Order recites improper and dishonest conduct as the basis of the award.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

## **BOARD FOR CONTRACTORS**

**IN RE:** In the matter of the Virginia Contractor Transaction Recovery Act Claim of Ray W. Koon & Nellie C. Koon (Claimants) and Simonton J. Candler, t/a Miracle Homes (Regulant)  
**LICENSE NUMBER:** 2705 023350

**FILE NUMBER:** 2004-02326

### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Ray W. and Nellie C. Koon, c/o W.G. Pickford, Attorney, and to Simon J. Candler, t/a Miracle Homes on January 30, 2004. The following individuals participated at the conference: Ray W. Koon, Claimant; Herbert Pickford, Attorney for Claimant; Candler J. Simonton, Regulant, by phone (Note: Licensing records reveal his name as Simonton J. Candler); Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer.

### **Background**

On March 20, 2002, in the Nelson County General District Court, Ray W. Koon & Nellie C. Koon obtained a Judgment against Candler J. Simonton, in the amount of \$5,040.71, plus interest and \$42.00 costs.

The claim in the amount of \$4,237.95 was received by the Department of Professional and Occupational Regulation on March 17, 2003.

### **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites ...."improper or dishonest performance or lack of performance of a construction contract".... as the basis for the suit.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant did contract with the regulant.

The Board issued Class A License Number 2705023350 to Simonton J. Candler t/a Miracle Homes on February 17, 1994. The license expired on February 28, 2002. The claimant entered into an "Agreement of Understanding" with Chandler J. Simonton on December 20, 1999 for the construction of a two-car garage at the claimants' residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on March 20, 2002. The claim was received on March 17, 2003.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into an "Agreement of Understanding" with Chandler J. Simonton on December 20, 1999 for the construction of a two-car garage at the claimants' residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."



8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. The claimant received partial payment of the judgment from the sale of a 1985 Ford motor home.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites ...."improper or dishonest performance or lack of performance of a construction contract".... as the basis for the suit.

In the Affidavit of Facts dated March 11, 2003, the claimants assert the regulant received a 1985 Ford motor home in exchange for the construction of a two-car garage. The regulant also received \$3,211.71 from the claimants toward the purchase of materials and to pay labor costs involved with the construction of the garage. The regulant worked on the project sporadically and finally ceased work prior to completing the project. The regulant was notified that the project had several building code violations which the regulant never corrected.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon the record and the information presented at the Recovery Fund, it is recommended that the claim be approved for payment in the amount of \$2,557.71 (\$5,040.71 plus \$120.00 Court Costs, less reimbursement of \$2,603.00, plus attorney fees of \$511.54, 20% of the adjusted judgment amount. The Order recites "improper and dishonest performance or lack of performance of a construction contract" which falls within the definition of improper and dishonest conduct, per Section 54.1-1118 of the Code of Virginia.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION  
BOARD FOR CONTRACTORS**

**IN RE: In the matter of the Virginia Contractor Transaction Recovery Act      Claim of  
Ralph H. and Jennie S. Nezas (Claimants) and AMG Contracting, Inc., t/a AMG  
Contracting (Regulant)  
LICENSE NUMBER: 2705 040148**

**FILE NUMBER: 2004-02373**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Ralph and Jennie Nezas and to AMG Contracting, Inc., on February 23, 2004. The following individuals participated at the conference: Ralph and Jennie Nezas, Claimants; George Eliades, Attorney for Complainants; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one appeared on behalf of AMG Contracting, Inc.

**Background**

On March 4, 2002, in the Circuit Court of Mecklenburg County, Ralph H. Nezas and Jennie S. Nezas obtained a Judgment against A. M. G. Contracting, Inc., in the amount of \$14,571.75, plus interest, attorney fees of \$5,892.93 and \$76.00 costs.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on March 4, 2003.

### **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Order does not recite the basis for the award.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants did contract with the regulant.

The Board issued Class A License Number 2705040148 to AMG Contracting, Inc., t/a AMG Contracting, Inc., on September 30, 1997. The license was revoked on October 15, 2002. The claimants entered into a written contract with AMG Contracting, Inc., for the construction of a house on November 7, 1998.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

*The Board did not receive pleadings or documents prior to the claim being filed.*

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on March 4, 2002. The claim was received on March 4, 2003.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with AMG Contracting, Inc., for the construction of a house.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Order does not recite the basis for the award.

In the Affidavit of Facts dated February 11, 2003, the claimants assert the regulant was paid for materials and labor which were not provided for the construction of the claimants' home. There were code violations on the patio due to the lack of hand railings and steps which the regulant would not provide.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon information presented at the Recovery Fund IFF and the default judgment, it is recommended that the claim be approved for payment in the amount of \$10,000.00.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

### **COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

### **BOARD FOR CONTRACTORS**

**IN RE:** In the matter of the Virginia Contractor Transaction Recovery Act Claim of Tommy & Brenda Wallace (Claimants) and Millennium Pools and Spas, Inc., t/a Millennium Pools and Spas, Inc. (Regulant)  
**LICENSE NUMBER:** 2705 052822

**FILE NUMBER:** 2003-01952

### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Tommy and Brenda Wallace and to Millennium Pools and Spas, Inc. on January 30, 2004. The following individuals participated at the conference: Tommy and Brenda Wallace, Claimants; Chad Rinard, Attorney for Claimants; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one appeared on behalf of Millennium Pools and Spas, Inc.

### **Background**

On October 17, 2002, in the Stafford County Circuit Court, Tommy Wallace, et al, obtained a Judgment against Millennium Pools and Spas, Inc., et al, in the amount of \$18,151.84 compensatory damages, \$20,000.00 punitive damages, \$3,500.00 attorney's fees, plus interest for a total sum of \$41,651.84.

The claim in the amount of \$10,000.00 was received by the Department of Professional and Occupational Regulation on January 21, 2003.

### **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Order recites "breach of contract, negligence, fraud, wrongful conversion and violation of the Virginia Consumer Protection Act" as the basis of the award.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants did contract with the regulant.

The Board issued Class B License Number 2705052822 to Millennium Pools and Spas, Inc., t/a Millennium Pools and Spas, Inc., on October 18, 1999. The license was permanently revoked on March 7, 2002. The claimants entered into a written contract with Millennium Pools and Spas, Inc., on April 17, 2001 for the construction of a pool at the claimants' residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on October 17, 2002. The claim was received on January 21, 2003.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Millennium Pools and Spas, Inc., for the construction of a pool at the claimants' residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The corporation was terminated with the State Corporation Commission (SCC) on October 31, 2001 for failure to file an annual report.

9. Code of Virginia Section 54.1-1120(A)(7) states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Order recites "breach of contract, negligence, fraud, wrongful conversion and violation of the Virginia Consumer Protection Act" as the basis of the award.

10. Code of Virginia Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. Code of Virginia Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The Order recites "breach of contract, negligence, fraud, wrongful conversion and violation of the Virginia Consumer Protection Act" which falls within the definition of improper and dishonest conduct, per Section 54.1-1118 of the Code of Virginia.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_



**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION  
BOARD FOR CONTRACTORS**

**IN RE:        IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION  
RECOVERY ACT CLAIM OF RAYMOND MILLER AND ELAINE MILLER  
(CLAIMANTS) AND DAVID J. FERNANDEZ, INC. T/A DAVID J.  
FERNANDEZ, INC. (REGULANT)  
LICENSE NUMBER 2705 050493**

**FILE NUMBER: 2003-02045**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Raymond and Elaine Miller, and David J. Fernandez, t/a David J. Fernandez, Inc., on December 17, 2003. The following individuals participated at the conference: Elaine Miller, Claimant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Fernandez, nor anyone on his behalf, appeared at the IFF.

**Background**

On **February 5, 2002**, in the Prince William General District Court, Raymond Miller and Elaine Miller obtained a **Judgment** against DJF, Inc. t/a David J. Fernandez, Inc., **in the amount of \$1,600.00, plus interest.**

The **claim** in the amount of **\$1,600.00** was received by the Department of Professional and Occupational Regulation on **January 31, 2003.**

**Summation of Facts**

1.     **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis for the suit. The block designated "Contract" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The Board issued Class B License Number 2705050493 to David J. Fernandez, Inc., t/a David J. Fernandez, Inc., on **June 30, 1999**. The license was permanently revoked on **August 10, 2001**.

The claimants entered into a written contract with DJF, Inc., on **September 23, 1999** for the installation of windows and other general improvements at the claimants' residence. The license number listed on the contract is 2705050493.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **February 5, 2002**. The claim was received on **January 31, 2003**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with the DJF, Inc. for the installation of windows and other general improvements at the claimants' residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis for the suit. The block designated "Contract" has been marked.

In the Affidavit of Facts dated **January 23, 2003**, the claimants assert they entered into a contract with the regulant and the regulant received a deposit of \$3,200.00 prior to starting the project. The regulant never returned to perform the work contracted for. The regulant returned \$1,600.00 of the \$3,200.00 paid by the claimants. The regulant still has an outstanding balance of \$1,600.00 due to the claimants.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$2,020.00, including judgment in the amount of \$1,600.00, court costs in the amount of \$100.00, and attorney fees in the amount of \$320.00. The regulant received a deposit of \$3,200.00 prior to starting the project. The regulant never returned to perform the work contracted for. The regulant returned \$1,600.00 of the \$3,200.00 paid by the claimants. The regulant still has an outstanding balance of \$1,600.00 due to the claimants. *These actions constitute retention of funds which falls within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.*

By:

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Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors  
Date: \_\_\_\_\_

## BOARD FOR CONTRACTORS

IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION  
RECOVERY ACT CLAIM OF GABRIEL SETH WORSHAM (CLAIMANT)  
AND ALVIN G. GABLE, T/A GABLE ENTERPRISES (REGULANT)

LICENSE NUMBER: 2705 055999

FILE NUMBER: 2003-01876

### Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Gabriel Seth Worsham and to Alvin T. Gable, t/a Gable Enterprises, on February 10, 2004. The following individuals participated at the conference: Gabriel Seth Worsham, Claimant; Irwin A. Heller, Esquire, Attorney for Claimant; Jeffrey W. Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Gable, nor anyone on his behalf, appeared at the IFF.

### **Background**

On **January 28, 2002**, in the General District Court for the County of Hanover, Seth Worsham obtained a **Judgment** against Alvin Gable, trading as Gable Enterprises, **in the amount of \$9,475.00, plus interest and \$30.00 costs.**

The **claim** in the amount of **\$9,535.00** was received by the Department of Professional and Occupational Regulation on **January 6, 2003.**

### **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis of the award. The block designated "Contract" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class B License Number 2705055999 to Alvin E. Gable, t/a Gable Enterprises, on **April 28, 2000**. The license was permanently revoked on **January 28, 2002**. The claimants entered into a written contract with Alvin E. Gable, t/a Gable Enterprises on **September 11, 2000** to supply all equipment and materials for the installation of HVAC equipment and the completion of plumbing work.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **January 28, 2002**. The claim was received on **January 6, 2003**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Alvin E. Gable, t/a Gable Enterprises to supply all equipment and materials for the installation of HVAC equipment and the completion of plumbing work.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis for the award. The block designated "Contract" has been marked.

In the Affidavit of Facts, the claimant assert he signed a contract with Alvin Gable, t/a Gable Enterprises to supply all equipment and materials for the installation of HVAC equipment and the completion of plumbing work. However, Gable breached the contract in that he promised to supply certain equipment and supplied entirely different equipment of lesser value or no equipment at all resulting in Gable's improper and dishonest conduct.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00, including judgment for \$9,475.00, court costs of \$60.00 and attorney's fees in the amount of \$465.00. Gable promised to supply certain equipment; however, Gable supplied entirely different equipment of lesser value or no equipment at all. These actions fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**



## **BOARD FOR CONTRACTORS**

**IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION  
RECOVERY ACT CLAIM OF BERNARD BRYANT CAMPBELL, SR., AND  
GRETA LINDALE CAMPBELL (CLAIMANTS) AND MICHAEL LAYNE TABOR,  
T/A G T CONSTRUCTION CO., (REGULANT)**

**LICENSE NUMBER: 2705 046444**

**FILE NUMBER: 2003-01513**

### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on October 29, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Mr. and Mrs. Bernard Bryant Campbell, Sr. and Mr. Michael Lane Tabor, Sr., t/a G.T. Construction Co. on September 2, 2003. The following individuals participated at the conference: Bernard Bryant Campbell, Sr. and Greta Lindale Campbell, Claimants; W. Colby Brown, Attorney for the Claimants; Jeffrey Buckley, Staff Member; and Robert M. Kirby, Presiding Board Member. Neither Tabor, Regulant, nor anyone on his behalf appeared at the IFF.

On March 25, 2004, the IFF was reconvened following the Board for Contractor's decision, at their meeting held on January 20, 2004, to remand this matter back to an IFF. By a letter dated February 12, 2004, Bernard and Greta Campbell and Michael Layne Tabor were notified that the IFF would reconvene on March 25, 2004. The following individuals participated at the conference: Jeffrey Buckley, Staff Member; Douglas Schroder, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither the Campbells, (Claimants), nor anyone on their behalf, appeared at the IFF. In addition, neither Tabor, (Regulant) nor anyone on his behalf, appeared at the IFF.

### **Background**

On **April 10, 2001**, in the United States Bankruptcy Court, Western District of Virginia, Michael Layne Tabor, Sr., t/a G. T. Construction Co., filed a Chapter 7 Petition.

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **October 15, 2002**. The initial claim was actually filed with a letter of complaint of September 5, 2001.

### **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

Michael Layne Tabor, Sr., t/a G. T. Construction Co., filed for bankruptcy protection, therefore judgment was not obtained.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705046444 to Michael Layne Tabor t/a G T Construction Co., on **September 9, 1998**. The license will expire on **September 30, 2004**. The claimants entered into a written contract with G T Construction Co., on **April 26, 1999** for the construction of a house.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

*The Board did not receive any pleadings or documents prior to the claim being filed.*

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The claim was received on **October 15, 2002**. Judgment was not obtained, as the regulant filed for bankruptcy protection.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with G T Construction Co., for the construction of a house.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for bankruptcy protection.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

Judgment was not obtained. In the Affidavit of Facts dated **October 11, 2002**, the claimants assert they entered into a contract with the regulant for the construction of a house. The regulant received a total amount of \$68,932.00 toward the construction of the house. The regulant did not return to complete

the project. The claimants had to hire another contractor to complete the project in the amount \$52,550.00. The additional cost incurred by the claimants was \$32,164.25 over the original contract amount.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "Yes."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The payment of the claim is based on the retention of funds and abandonment, which fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

### **COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

### **BOARD FOR CONTRACTORS**

IN RE:        IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION  
RECOVERY ACT CLAIM OF LEE A. WALKER (CLAIMANT) AND A C POOLS,  
INC., T/A A C POOLS, INC. (REGULANT)

**LICENSE NUMBER: 2705 061983**

**FILE NUMBER: 2003-01536**

### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Lee A. Walker and to Chester Sabisky of A C Pools, Inc. on February 18, 2004. The following individuals participated at the conference: Lee Walker, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one from AC Pools, Inc. (Regulant), appeared at the IFF, in person or by counsel.

### **Background**

On **December 19, 2001**, in the City of Suffolk General District Court, Lee A. Walker obtained a **Judgment** against A C Pools, Inc., in the amount of **\$1,800.00, plus interest and \$30.00 costs**.

On **December 7, 2001**, in the United States Bankruptcy Court, Eastern District of Virginia, Norfolk Division, A C Pools, Inc., filed a Chapter 7 Petition.

The **claim** in the amount of **\$1,830.00** was received by the Department of Professional and Occupational Regulation on **October 10, 2002**. On **July 31, 2003** the claimant amended the claim amount to include additional expenses in the amount of \$795.58 for a total claim amount **\$2,625.58**.

### **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis for the suit. The block designated "Other" has been marked.

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant **did not** contract with the regulant. The claimant entered into a contract with A C Pools (note: Inc. is not included on the contract or checks issued by the claimant).

The Board issued Class B License Number 2705061983 to A C Pools, Inc., t/a A C Pools, Inc., on **March 26, 2001**. The license was permanently revoked on

**October 10, 2002.** The claimant entered into a written contract with A C Pools on **April 4, 2001** for the construction of a pool at the claimant's residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The claim was received on **October 10, 2002**. Judgment was entered on **December 19, 2001**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with A C Pools for the construction of a pool at the claimant's residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant filed for Chapter 7 bankruptcy protection.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

Judgment was obtained.

In the Affidavit of Facts dated **September 27, 2002**, the claimant asserts A C Pools, Inc. was contracted with to construct a pool at the claimant's residence. A C Pools, Inc. never completed the project; the pool liner was defective and maintenance problems. The warranties were not filed with the manufactures. The items which need to be completed or repaired exceed the 10% of the unpaid balance due to the regulant.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "Yes."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based on the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$2,625.58, including judgment for \$1,800.00, court costs of \$30.00 and additional expenses in the amount of \$795.58. During the IFF, the Claimant stated that she incurred additional expenses in the amount of \$795.58 for completion of the pool to meet Code.

A C Pools, Inc. never completed the project; the pool liner was defective and maintenance problems. The warranties were not filed with the manufacturers. The items which need to be completed or repaired exceed the 10% of the unpaid balance due to the regulant. These actions fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

### **BOARD FOR CONTRACTORS**

**IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION  
RECOVERY ACT CLAIM OF S. MARK LINDSEY (CLAIMANT) AND NOVA  
INDUSTRIES, INC., T/A S & S KITCHEN & BATH (REGULANT)**

**LICENSE NUMBER: 2705 053994**

**FILE NUMBER: 2003-01532**



### **Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to S. Mark Lindsey and to Patrick Plunkard of NOVA Industries, t/a S & S Kitchen & Bath, on February 18, 2004. The following individuals participated at the conference: Mark Lindsey, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. No one from NOVA Industries, Inc. (Regulant), appeared at the IFF, in person or by counsel.

### **Background**

On **April 24, 2002**, in the General District Court for the County of Prince William, S. Mark Lindsey obtained a **Judgment** against NOVA Industries, Inc., t/a S & S Kitchen and Bath, in the amount of **\$6,000.00, plus court cost of \$155.00, and attorney fess of \$250.00.**

The **claim** in the amount of **\$6,405.00** was received by the Department of Professional and Occupational Regulation on **October 1, 2002.**

### **Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Judgment Order recites "improper and dishonest conduct by a contractor.  
"

2. **Code of Virginia Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class A License Number 2705053994 to NOVA Industries, Inc., t/a S & S Kitchen and Bath, on **April 4, 2000**. The license was permanently revoked on **January 25, 2002**. The claimant entered into a written contract with S & S Kitchen and Bath on **November 1, 2000** for work to be performed at his Reston, Virginia residence.

3. **Code of Virginia Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was served prior to the claim being filed.

4. **Code of Virginia Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did receive pleadings or documents prior to the claim being filed.

5. **Code of Virginia Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **April 24, 2002**. The claim was received on **October 1, 2002**.

6. **Code of Virginia Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with S & S Kitchen and Bath for renovation work to be performed at his Reston, Virginia residence.

7. **Code of Virginia Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. Lindsay's attorney writes that the corporation is a dissolved corporation, out of business and its offices closed and its principals in Maryland. The original process was "not found" by the Sheriff at the company's principal address and as a result it is impossible to

conduct debtor interrogatories, there being no one to serve with an interrogatory summons.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Judgment Order recites the basis for the judgment as "improper and dishonest conduct by a contractor."

In the Affidavit of Facts dated January 18, 2003, the claimant asserts that NOVA Industries, Inc., t/a S & S Kitchen and Bath, is indebted to him in the amount of \$6,000.00 for failure to return the deposit for bathroom remodeling for which no work was done or materials supplied, and such failure constituted dishonest or improper conduct by a licensed contractor.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$6,405.00, including judgment in the amount of \$6,000.00, court costs in the amount of \$155.00, and attorney fees in the amount of \$250.00. The Judgment Order recites the basis for the judgment as improper and dishonest conduct by a contractor per Section 54.1-1120(A), Code of Virginia.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**  
**BOARD FOR CONTRACTORS**

**IN RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION  
RECOVERY ACT CLAIM OF TODD A. LANDRETH (CLAIMANT) AND  
CLAYTON ALLEN, CLAYTON ALLEN'S ROOFING (REGULANT)**

**LICENSE NUMBER: 2705 025308**

**FILE NUMBER: 2003-02011**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on March 25, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to Todd A. Landreth and to Clayton Allen on February 18, 2004. The following individuals participated at the conference: Todd Landreth, Claimant; Jeffrey Buckley, Staff Member; and Ruth Ann Wall, Presiding Officer. Neither Allen, (Regulant) nor anyone on his behalf, appeared at the IFF.

**Background**

On **June 3, 2002**, in the General District Court for the City of Virginia Beach, Todd A. Landreth obtained a **Judgment** against Clayton Allen's Roofing, **in the amount of \$2,435.00, including \$18.00 costs.**

The **claim** in the amount of **\$2,703.00** was received by the Department of Professional and Occupational Regulation on **January 27, 2003**, for \$2,435.00, plus \$18.00 court costs, and \$250.00 attorney fees.

**Summation of Facts**

1. **Code of Virginia Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt does not recite the basis of the award.

2. Code of Virginia Section 54.1-1120(A) also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did** contract with the regulant.

The Board issued Class C License Number 2705 025308 to Clayton Allen on **October 14, 1994**. The license was suspended on **January 10, 2001**. The claimant entered into a written contract with Clayton Allen on **February 14, 2001** for roof replacement to be performed at his Virginia Beach, Virginia residence.

3. Code of Virginia Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. Code of Virginia Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

5. Code of Virginia Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on **June 3, 2002**. The claim was received on **January 27, 2003**.

6. Code of Virginia Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Clayton Allen, t/a Clayton Allen's Roofing for roof replacement to be performed at his Virginia Beach, Virginia residence.

7. Code of Virginia Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted. The regulant failed to respond to the interrogatories.

9. **Code of Virginia Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt does not recite the basis of the award.

In the Affidavit of Facts dated November 4, 2002, the claimant asserts he signed a contract with Clayton Allen and Clayton Allen's Roofing for roof replacement and that the contract was never completed, the job abandoned, and monies were paid for materials that were never purchased.

10. **Code of Virginia Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy. In response to this question, the claimant responded, "No."

11. **Code of Virginia Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

### **Conclusion and Recommendation**

Based upon the record and the information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$2,751.00 including judgment in the amount of \$2,435.00, court costs in the amount of \$18.00, and attorney fees in the amount of \$298.00.

The contract entered into between the Regulant and Claimant was never completed, the Regulant abandoned the job, and monies were paid for materials that were never purchased. These actions fall within the definition of improper and dishonest conduct, per Section 54.1-1118, Code of Virginia.

This Presiding Officer notes that the Regulant's license was suspended on January 10, 2001, and this contract was entered into on February 14, 2001.

By: \_\_\_\_\_

Ruth Ann Wall  
Presiding IFF Officer  
Board for Contractors

Date: \_\_\_\_\_

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

1. Name: Ruth Ann Wall
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on March 25, 2004
5. Nature of Personal Interest Affected by Transaction: \_\_\_\_\_

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

  
Signature

3-25-2004

\_\_\_\_\_  
Date